

History Shows Arbitration Bill Will Not Keep Fired Officers Fired

a fact sheet
from
Portland
Copwatch
June 7, 2020

The current bill being proposed to limit the powers of arbitrators in police misconduct cases*-1 could be helpful in specific circumstances, but will not keep officers fired for extreme behavior fired, if history is a guide. Portland Copwatch (PCW) recognizes that many people in the community, including people we have worked with, support this proposed legislation. PCW does not oppose the currently proposed bill. A stronger bill to determine how officers' discipline is judged is needed.

Here is the key problem: The bill specifically says it only applies in cases where the arbitrator agrees misconduct occurred. The reason most firings are overturned in serious cases is because arbitrators do not agree with the findings.

Officer Valadez (2015): Arbitrator Says Sexual Misconduct Wasn't Criminal

The most recent case, which Portland Copwatch believes prompted the City to call for this legislation, involved Officer Alfonso Valadez. He was fired after being accused of showing poor judgment by engaging in sex at a party where alcohol had been consumed, bringing discredit to the Bureau and of having sex with a woman who did not give her consent (a crime).*-2 The arbitrator agreed with the former conclusion, leading to the originally-proposed 40 hours off for that charge, but disagreed with the latter allegation, which was what led to his termination. Thus, only the 40 hour suspension was applied.



Officer Frashour (2010): Training Officers Say Shooting Aaron Campbell in Policy

The city fired Officer Ron Frashour for violating training when he shot and killed the unarmed Aaron Campbell in the back in 2010. The Lieutenant from the Training division clearly stated Frashour did not act appropriately. However, Sergeants under his command contradicted his testimony and the arbitrator ruled there was no misconduct, overturning the discipline and ordering Frashour reinstated with back pay.*-3

Lt. Kaer (2006): Arbitrator Says Violations Occurred But Deadly Force Justified

When Lt. Jeffrey Kaer left his assigned post to respond to his sister's call about a man in a car outside her house, it ended with Kaer shooting and killing Dennis Young. Kaer claimed he was in danger of being killed by Young's moving car. The arbitrator agreed Kaer violated some policies (including not waiting for backup to arrive), but said he did not violate the policy against shooting at moving vehicles because the vehicle was not moving at the time of the shooting. Kaer ended up with a suspension of 30 hours without pay.*-4



Officer Humphreys & Sgt. Nice (2003): No Fault in Failing to Bring James Chasse to Hospital

Officer Chris Humphreys and Sgt. Kyle Nice were suspended for 80 hours each because they did not get James Chasse, Jr. to a hospital after they caused serious injuries that led to his death by beating him in 2006 (notably, not for the force they used). The arbitrator overruled the finding and ordered they be given back pay and that they have their records erased.

Officer McCollister (2003): Six Month Suspension Overturned in Kendra James Case

The arbitrator determining Officer Scott McCollister did not violate policy when he killed Kendra James in 2003 explicitly cited a disconnect between the Chief's findings and "the true facts of the situation." The arbitrator claimed that James dictated McCollister's actions and worried if she had driven away and caused an accident the police would have been blamed for that.*-5 McCollister was reinstated with back pay.



Officer Erickson: No Misconduct Shooting Fleeing Black Man in the Back

Officer Douglas Erickson was fired in 1993 after shooting and wounding Gerald Gratton, an African American man, in the back. An arbitrator over-ruled the finding and ordered Erickson reinstated.

There are other instances where officers' firings were overturned— officers who made T-Shirts saying "Don't Choke 'Em, Smoke 'Em" after African American security guard Tony Stevenson was choked by police in 1985, and officers involved in leaving dead possums in front of a black-owned business in the early 1980s also had their jobs reinstated.

We could be wrong— the City may believe the bill means that if the arbitrator agrees any misconduct occurred, they cannot change the level of discipline originally applied to all violations. However, it is highly unlikely any labor organization would agree to that interpretation.

At this time Portland Copwatch and others in the community continue to research what a revised, strengthened bill would look like. For more information contact Portland Copwatch at 503-236-3065 or write to copwatch@portlandcopwatch.org.

*1-2020 SB 1567 <https://olis.leg.state.or.us/liz/2020R1/Downloads/MeasureDocument/SB1567/Introduced>

*2-Investigators in Washington State did not pursue criminal charges saying the submitted rape kit would not prove whether there was consent.

*3-So far as we know Frashour is still on the force assigned to desk duty.

*4-See our analysis of this case at https://www.portlandcopwatch.org/shootings_analysis_0713.html#fired

*5-See our reporting on this at <http://www.portlandcopwatch.org/PPR38/rapback38.html>